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11 IN THE UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13  
14 UNITED STATES OF AMERICA,  
15 Plaintiff,  
v.  
16 RUBEN ANGEL CASTRO,  
17 Defendant.

CASE NO. 2:20-CR-0004-TLN  
18  
19 STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER  
20  
21 DATE: November 18, 2021  
TIME: 9:30 a.m.  
COURT: Hon. Troy L. Nunley  
22

23 By previous order, this matter was set for status on November 18, 2021. By this stipulation and  
24 proposed order, the parties respectfully request that the Court continue the status conference until  
January 13, 2022. To the extent it is needed, this stipulation supplements the basis for exclusion of time  
25 under the Court's General Orders addressing public health concerns, and requests that the Court also  
exclude time between November 18, 2021, and January 13, 2022, under Local Code T4, for the reasons  
26 set forth below.

27 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the  
28 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to  
continue all criminal matters to a date after June 1. This and previous General Orders were entered to  
address public health concerns related to COVID-19.

29 Although the General Orders address the district-wide health concern, the Supreme Court has  
30 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive

1 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 2 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 3 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 4 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 5 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 6 or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 8 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice  
 9 continuances are excludable only if “the judge granted such continuance on the basis of his findings that  
 10 the ends of justice served by taking such action outweigh the best interest of the public and the  
 11 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless  
 12 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the  
 13 ends of justice served by the granting of such continuance outweigh the best interests of the public and  
 14 the defendant in a speedy trial.” *Id.*

15 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 20 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*  
 21 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the  
 22 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a  
 23 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following  
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-  
 26 justice exception, § 3161(h)(7) (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date

27  
 28 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any  
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 1. By this stipulation, defendant now moves to continue the status conference until January  
5 13, 2022, at 9:30 a.m., and to exclude time between November 18, 2021, and January 13, 2022, under the  
6 Court’s General Orders and Local Code T4.

7 2. The parties agree and stipulate, and request that the Court find the following:

8 a) The government has produced the discovery associated with this case which  
9 includes, among other things, a considerable number of investigative reports, video surveillance,  
10 audio recordings, and laboratory reports. The government produced this discovery via a file  
11 sharing cloud platform, to which defense counsel has access.

12 b) Counsel for defendant believes she will need some time to go through the  
13 discovery. Counsel will also need additional time to consult with her client, to review the current  
14 charges, to conduct investigation and research related to the charges, to review discovery for this  
15 matter, to discuss potential resolutions with her client, to prepare pretrial motions, and to otherwise  
16 prepare for trial.

17 c) Counsel for defendant believes that failure to grant the above-requested  
18 continuance would deny counsel the reasonable time necessary for effective preparation, taking  
19 into account the exercise of due diligence.

20 d) The government does not object to the continuance.

21 e) Based on the above-stated findings, the ends of justice served by continuing the  
22 case as requested outweigh the interest of the public and the defendant in a trial within the original  
23 date prescribed by the Speedy Trial Act.

24 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
25 et seq., within which trial must commence, the time period of November 18, 2021 to January 13,  
26 2022, inclusive, is deemed excludable pursuant to the Court’s General Orders, and pursuant to  
27 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted  
28 by the Court at defendants’ request on the basis of the Court’s finding that the ends of justice

1 served by taking such action outweigh the best interest of the public and the defendant in a speedy  
2 trial.

3. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
4 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
5 must commence.

6 IT IS SO STIPULATED.

7 Dated: November 16, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

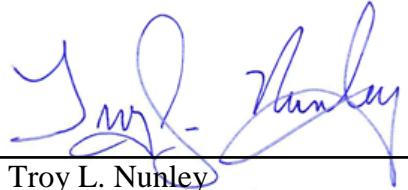
9 /s/ JAMES R. CONOLLY  
10 JAMES R. CONOLLY  
11 Assistant United States Attorney

12 Dated: November 16, 2021

13 /s/ LINDA C. ALLISON  
14 LINDA C. ALLISON  
15 Assistant Federal Defender  
16 Counsel for Defendant  
17 RUBEN ANGEL CASTRO

## FINDINGS AND ORDER

18 IT IS SO FOUND AND ORDERED this 16<sup>th</sup> day of November, 2021.

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22 Troy L. Nunley  
23 United States District Judge  
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